IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3088 OF 2006

Shri Vivek Gupta ...Applicant
Vs.
C.B.I. & Ors. ...Respondents

Shri Prakash Naik for the Applicant.
Shri Rajesh More, A.P.P. for the Respondent-State.

CORAM : A. S. OKA, J.
DATE : AUGUST 25, 2006.

P.C.:

1. Heard Shri Naik appearing for the Applicant. Prayer in this Application is for setting aside order dated 16th June, 2006 passed by the learned Principal Judge of the City Civil Court, Mumbai on the transfer Application preferred by the Applicant and for transfer of a special case pending before the learned Special Judge, Mumbai.

2. The learned Advocate appearing for the Applicant submitted that considering the averments made in the transfer application filed in the Sessions Court and considering the manner in which the trial proceeded before the learned Special Judge, the Applicant has a reasonable apprehension that he will not get justice from the concerned learned Judge. He

submitted that in the circumstances order of transfer ought to have been passed by the learned Principal Judge.

3. I have considered the submissions. I have also perused the averments made in the Application for transfer filed before the learned Sessions Judge. The first ground in the Application is based on order dated 13th March, 2006 passed by the learned Special Judge. It is not in dispute that the said order was challenged by the Applicant by filing Writ Petition in this Court and the said Writ Petition has been disposed of with certain directions to the learned Judge. It appears from the Application that as the learned Special Judge was dealing with a specially assigned case referred by the Apex Court, he was sitting in two different courts one at Mazgaon and the other in the Sessions Court. The relevant averments made in the Application for transfer as regards what transpired on 21st March, 2006 are as under:

> "12. The Applicant further says that on 21st March, 2006, His Honour Judge who was assigned to hear the case of Bilkis Banu

proceeded to Mazgaon and did not come back to his building, till 2.00 p.m.

13. The Applicant says that since the Applicant's Advocate had to rush to Delhi, left the court at 2.00 p.m.

14. The Applicant therefore, in the afternoon Sessions made an application before His Honour Judge stating therein that the hearing of the Petition is fixed on the 22nd day of March in the Honourable High Court of Bombay and also craved for an adjournment on the ground that the Applicant's advocate all of a sudden rushed to Delhi. The said application was filed in the Afternoon session and prayed for time. Hereto annexed and marked Exhibit 'A' is a copy of the said application.

15. The Applicant says that when the applicant presented the said application, His Honour Judge flared up and told the Applicant that the Advocate has no business

to go to Delhi, when the matter was fixed and as desired by the Applicant, two of the witnesses were present in the Court."

If these are the averments made in the Application for transfer, it is impossible to accept the case made out by the Applicant about existence of reasonable apprehension.

4. The learned Principal Judge has considered the grievance made by the Applicant and has passed a reasoned order rejecting the prayer for transfer.

5. No case for interference is made out. Application is rejected.

JUDGE